

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

My Ngo v. Tammy Campbell, et al.

Ngo v. Campbell, No. 1:23-cv-01423-KES-SKO (E.D. Cal. Aug. 24, 2025) · No. 1:23-cv-01423-KES-SKO ·
Decided August 25, 2025

SUMMARY

The United States District Court for the Eastern District of California denied My Ngo’s motion for a preliminary injunction and appointment of counsel. The court adopted the magistrate judge’s findings and recommendations, concluding that Ngo’s 42 U.S.C. § 1983 claims challenging his confinement and the failure to provide a copy of his judgment of conviction were barred and time-barred. The action was dismissed for failure to state a claim, and the clerk was directed to close the case.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 25, 2025
DOCKET	1:23-cv-01423-KES-SKO
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se prisoner civil-rights action under 42 U.S.C. § 1983; the district court conducted de novo review of a magistrate judge's findings and recommendations, denied plaintiff's motion for a preliminary injunction and appointment of counsel, adopted the findings and recommendations, and dismissed the amended complaint for failure to state a claim.
STANDARD OF REVIEW	De novo review under 28 U.S.C. § 636(b)(1) of objections to a magistrate judge's findings and recommendations.
PRECEDENTIAL VALUE	Nonprecedential district-court order
PARTIES	My Ngo v. Tammy Campbell, et al.

TOPICS

- section 1983
- prisoners rights
- statute of limitations
- injunctions
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff's § 1983 claim, notwithstanding its characterization as a challenge to the procedure for obtaining a judgment of conviction, was barred because it effectively challenged the legality of his conviction or confinement.
2. Whether plaintiff's § 1983 claim was barred by California's two-year statute of limitations and whether the discovery rule saved the claim.
3. Whether plaintiff was entitled to a preliminary injunction.
4. Whether plaintiff had shown exceptional circumstances warranting appointment of counsel under 28 U.S.C. § 1915(e)(1).

HOLDINGS

1. A prisoner may not use a § 1983 action to pursue a claim that, even when characterized as a challenge to the procedure for obtaining a judgment of conviction, continues to challenge the legality of the prisoner's conviction or confinement unless the applicable conditions for such a claim are satisfied. Plaintiff's claim remained barred because it asserted that his imprisonment was unlawful.
2. The court found no basis for plaintiff's contention that California Penal Code sections 1207 or 1213 required defendant Campbell to furnish plaintiff with a copy of the judgment of conviction.
3. The claim was barred by the applicable two-year statute of limitations because the alleged injury accrued more than twenty years before the action was filed, and the discovery rule did not save the claim.
4. Plaintiff was not entitled to a preliminary injunction because he failed to satisfy the requirements for injunctive relief, and he was not entitled to appointed counsel because he failed to demonstrate exceptional circumstances.

KEY QUOTATIONS

“Federal law determines when a civil rights claim accrues. Under federal law, a claim accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action.” (at 3)

“The action is dismissed for plaintiffs failure to state a claim upon which relief can be granted;” (at 4)

FACTUAL BACKGROUND

Plaintiff was admitted to the California Department of Corrections and Rehabilitation on July 20, 2004. He alleged that the facility warden unlawfully imprisoned him by failing to provide a certified copy of his judgment of conviction. Plaintiff represented that he learned of the alleged defect in the judgment on April 2, 2022, and exhausted administrative remedies on June 24, 2022, but the court concluded that the alleged injury accrued when the judgment issued or when plaintiff entered custody and that the claim was untimely.

PROCEDURAL HISTORY

Plaintiff filed a § 1983 action alleging that a prison warden failed to provide him with a copy of his judgment of conviction. The magistrate judge recommended dismissal because the claim challenged the legality of plaintiff's conviction or confinement and was barred by Heck and because it was untimely. Plaintiff objected, characterizing the claim as a challenge to the process for obtaining the judgment, but the district court found the objections insufficient, adopted the findings and recommendations in full, denied plaintiff's pending motions, dismissed the action, and directed the clerk to close the case.

DISPOSITION

dismissed

CASES CITED

- Preiser v. Rodriguez, 411 U.S. 475, 489-90 (1973)
- Heck v. Humphrey, 512 U.S. 477, 486-87 (1994)
- Price v. McNeil, 340 F. App'x 581, 583-84 (11th Cir. 2009)
- People v. Howard, 72 Cal. App. 561 (Cal. Ct. App. 1925)
- Ex parte Taube, 78 Cal. App. 2d 142 (1947)
- Tsetse v. Campbell, No. 1:24-CV-00275-CDB (PC), 2024 WL 4894622, at *4 (E.D. Cal. Nov. 26, 2024)
- Klein v. City of Beverly Hills, 865 F.3d 1276, 1278-80 (9th Cir. 2017)
- Maldonado v. Harris, 370 F.3d 945, 955 (9th Cir. 2004)
- Bibeau v. Pac. Nw. Rsch. Found. Inc., 188 F.3d 1105, 1108 (9th Cir. 1999)
- Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)

OPINION

(PC) Ngo v. Campbell

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 MY NGO, Case No.: 1:23-cv-01423-KES-SKO 12 Plaintiff, ORDER DENYING
PLAINTIFF’S MOTION

FOR A PRELIMINARY INJUNCTION AND

13 v. TO APPOINT COUNSEL AND ADOPTING

FINDINGS AND RECOMMENDATIONS TO

14 TAMMY CAMPBELL, et al., DISMISS FIRST AMENDED COMPLAINT

FOR FAILURE TO STATE A CLAIM UPON

15 Defendants. WHICH RELIEF CAN BE GRANTED

16 Docs. 18, 19

17 18 Plaintiff My Ngo is proceeding pro se and in forma pauperis in this action filed pursuant 19 to 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 20 U.S.C. § 636(b)(1)(B) and Local Rule 302. 21 On October 15, 2024, the assigned magistrate judge issued findings and 22 recommendations, recommending the action be dismissed for plaintiff's failure to state a claim 23 upon which relief can be granted. Doc. 19. Specifically, the magistrate judge found that (1) 24 plaintiff's claim amounts to a challenge to his conviction and sentence and may not be pursued in 25 this § 1983 action, and (2) plaintiff's claim is time barred. Id. at 4–9. Those findings and 26 recommendations were served on plaintiff and contained notice that any objections thereto were 27 due within 14 days after service. Id. at 8–9. Plaintiff filed objections on October 25, 2024. Doc. 20. 1 In accordance with the provisions of 28 U.S.C. § 636(b)(1), this Court has conducted a de 2 novo review of this case. Having carefully reviewed the file, including plaintiff's objections, the 3 Court finds the findings and recommendations to be supported by the record and proper analysis. 4 In the objections, plaintiff asserts that he is not challenging his conviction and sentence, 5 but rather, the process by which defendant Campbell allegedly failed to furnish him with a copy 6 of his judgment of conviction. Notwithstanding that characterization, the objections continue to 7 assert the same challenges to plaintiff's confinement that were correctly found to be barred in the 8 findings and recommendations. See *Preiser v. Rodriguez*, 411 U.S. 475, 489–90 (1973); *Heck v. 9 Humphrey*, 512 U.S. 477, 486–87 (1994); see also *Price v. McNeil*, 340 F. App'x 581, 583–84 10 (11th Cir. 2009) (challenge to legality of confinement barred under *Heck* even where liberally 11 construed as challenge to underlying procedure rather than results). 12 Plaintiff provides no basis to overturn the magistrate judge's well-reasoned conclusion 13 that “[n]either section 1207, nor section 1213 of the California Penal Code, require Defendant 14 Campbell to furnish Plaintiff with a copy of the judgment of conviction.” Doc. 19 at 6; see also 15 *Tsetse v. Campbell*, No. 1:24-CV-00275-CDB (PC), 2024 WL 4894622, at *4 (E.D. Cal. Nov. 26, 16 2024) (“There is no requirement in the applicable California law that mandates that a warden, 17 such as Defendant, must provide a copy of the judgment of conviction on request to a prisoner, 18 such as Plaintiff.”). Plaintiff continues to rely on *People v. Howard*, 72 Cal. App. 561 (Cal. Ct.

19 App. 1925) to suggest otherwise, but as the findings and recommendations note, that case 20 concerned the admissibility of a certified copy of a judgment of conviction and does not support 21 plaintiff's argument.¹ Doc. 19 at 6. Ex parte Taube, another case cited in the objections, also 22 does not support plaintiff's argument; that case discussed the requirements of section 1213 of the 23 California Penal Code as applied to subsequent orders regarding concurrent sentencing terms. 24 See Ex parte Taube, 78 Cal. App. 2d 142 (1947). 25 /// 26 1 Additionally, *Howard* suggests that it is “the duty of the warden to furnish on demand a certified 27 copy of the commitment in his custody” in connection with trial, not at any time the prisoner requests. *Howard*, 72 Cal. App. at 564. The court in *Howard* did not identify the source of the 1 The objections represent that plaintiff became aware that his judgment of conviction failed 2 to comply

with section 1213 of the California Penal Code on April 2, 2022, and that he exhausted 3 his administrative remedies concerning this claim on June 24, 2022. These dates do not 4 undermine the magistrate judge’s conclusion that plaintiff’s claims are time barred. “For actions 5 under 42 U.S.C. § 1983, courts apply the forum state’s statute of limitations for personal injury 6 actions. California has a two-year statute of limitations for personal injury actions.” *Klein v. City of Beverly Hills*, 865 F.3d 1276, 1278 (9th Cir. 2017) (internal alternations, citations, and 8 quotation marks omitted). “Federal law determines when a civil rights claim accrues. Under 9 federal law, a claim accrues when the plaintiff knows or has reason to know of the injury which is 10 the basis of the action.” *Maldonado v. Harris*, 370 F.3d 945, 955 (9th Cir. 2004) (internal citation 11 and quotation mark omitted). Under the “discovery rule,” the statute only begins to run once a 12 plaintiff knows of his injury and its cause. *Bibeau v. Pac. Nw. Rsch. Found. Inc.*, 188 F.3d 1105, 13 1108 (9th Cir. 1999). “The discovery rule requires the plaintiff to be diligent in discovering the 14 critical facts of the case.” *Klein*, 865 F.3d at 1278. “As a result, a plaintiff who did not actually 15 know that his rights were violated will be barred from bringing his claim after the running of the 16 statute of limitations, if he should have known in the exercise of due diligence.” *Bibeau*, 188 17 F.3d at 1108. 18 The basis for this action is plaintiff’s contention that he is being unlawfully imprisoned 19 because the warden of the facility at which he is confined did not provide him with a certified 20 copy of his judgment of conviction. The magistrate judge appropriately found that plaintiff was 21 admitted to the California Department of Corrections and Rehabilitation on July 20, 2004, and 22 that any judgement of conviction would have issued at that time. Doc. 19 at 7. Thus, plaintiff’s 23 alleged injury regarding his judgment of conviction accrued more than 20 years ago and the 24 statute of limitations for his claim has expired. *Id.* at 7–8 (collecting cases). Because plaintiff 25 represents that he delayed more than 17 years before attempting to discover the critical facts of 26 his case, the discovery rule will not save his time-barred claim. Cf. *Klein*, 865 F.3d at 1279–80 27 (detailing the plaintiff’s numerous and varied attempts to pursue the factual basis for his claim). 1 In sum, plaintiff’s objections fail to meaningfully address the findings and 2 || recommendations and otherwise lack any additional allegations sufficient to plausibly state a 3 | claim under 42 U.S.C. § 1983 against any defendant. 4 Plaintiff’s pending motion for a preliminary injunction and for the appointment of 5 | counsel, Doc. 18, is denied. Plaintiff has failed to satisfy the requirements for injunctive relief 6 | and has not made the requisite showing of exceptional circumstances justifying the voluntary 7 | assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). *Winter v. Nat. Res. Def. Council, Inc.*, 8 | 555 U.S. 7, 20 (2008); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). 9 Accordingly: 10 1. Plaintiff’s motion for a preliminary injunction and for the appointment of counsel, 11 Doc. 18, is denied;

12 2. The findings and recommendations issued on October 15, 2024, Doc. 19, are 13 adopted in full; 14 3. The action is dismissed for plaintiffs failure to state a claim upon which relief can 15 be granted; and 16 4. The Clerk of the Court is directed to close this case. 17 18

19 | IT IS SO ORDERED. _

20 Dated: _ August 24, 2025 4A .

UNITED STATES DISTRICT JUDGE

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